No. 89-899 (2)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

LANTECH, INC.,

Petitioner,

v.

KAUFMAN COMPANY OF OHIO, INC.,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Petitioner Lantech, Inc., plaintiff and appellant below, has petitioned for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit affirming a holding that United States Patent No. 4,418,510 (hereinafter "the '510 patent") is invalid and unenforceable.

SUMMARY OF ARGUMENT

This case is insignificant and unimportant. Petitioner has not presented any special or important

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[1] Respondent Kaufman Company of Ohio, Inc., has no parent companies, no subsidiaries, and no publicly held affiliates. All parties in the Court of Appeals are listed in the caption of this case in this Court.

reason that justifies the granting of a writ of certiorari. Accordingly, the petition should be denied.

ARGUMENT

It is respectfully submitted that this case is perhaps one of the least important cases ever brought before this Court because it does not have precedential value nor does it involve an issue of public interest. This conclusion is confirmed by the action of the Court of Appeals. Furthermore, it is confirmed by the petition which does not state one special or important reason why a writ of certiorari should be granted.

The Court of Appeals realized the insignificance of this case when it determined that its opinion should be unpublished. The determination to issue an unpublished opinion is controlled by Rule 47.8(c) of the Rules of the United States Court of Appeals for the Federal Circuit, which states as follows:

> Unpublished opinions and orders are those unanimously determined by the panel as not adding significantly or usefully to the body of law and not having precedential value. Opinions and orders designated as unpublished shall not be employed as precedent by this court, and may not be cited by counsel as precedent, except in support of a claim of *res judicata*, collateral *estoppel*, or law of the case.

The unpublished opinion of the Court of Appeals for this case included a note as follows:

> Note: This opinion has not be prepared for publication in a printed volume because it does not add significantly to the body of law

> and is not of widespread legal interest. It is a public record. It is not citable as precedent. The decision will appear in tables published periodically.

The panel which heard this case in the Court of Appeals *unanimously* determined that the opinion did not add significantly to the body of law and does not have precedential value.[2] The action by the Court of Appeals conclusively shows that the decision below did not involve an important question of federal law which has not been, but should be, settled by this Court; nor has the Court of Appeals decided a federal question in a way in conflict with applicable decisions of this Court, the Court of Appeals for the Federal Circuit, or of another court of appeals on the same matter.

The petition indicates nothing more than the dissatisfaction of a private litigant and presents no valid reason for review. The petition is merely a catalog of *factual* arguments which petitioner has previously presented to the lower courts. These arguments have been redrafted so that they give the appearance of complying with the requirements of Rule 17 of the Rules of the Supreme Court of the United States. Petitioner's arguments have been rejected by the

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[2] It should be noted that while Judge Bissell dissented from the majority opinion and would have granted the petition for a rehearing by the panel, she did not determine that this case was of such importance as to require publication of the opinion. Furthermore, the remaining judges of the Court of Appeals must have also determined that the case was insignificant because not one judge was shown on the order declining petitioner's suggestion for a rehearing *in banc* as being in favor of such a rehearing.

lower courts, and should be rejected by this Court as well.

The Court of Appeals reviewed the findings of fact and conclusions of law of the trial court. It concluded that the trial court's ruling that the '510 patent is invalid pursuant to 35 USC § 103 (1982) complied with the applicable decisions of this Court and the Court of Appeals for the Federal Circuit. The Court of Appeals correctly held that the findings of fact and conclusions of law were not clearly erroneous and affirmed the trial court's ruling.

CONCLUSION

It is respectfully submitted that the petition should be denied.

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